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Data Protection & the Right to Be Forgotten

Introduction

Peggy Valcke

Professor of Law KU Leuven / EUI

FLORENCE SCHOOL OF REGULATION C&M
ANNUAL SCIENTIFIC SEMINAR ON THE ECONOMICS,
LAW AND POLICY OF COMMUNICATIONS AND MEDIA:
POLICY CHALLENGES IN DIGITAL MARKETS

27-28 March 2015





His memory is
like the internet
– he never
forgets!

Think twice
before you post!

INTERNET

A Right to Be Forgotten?



(Princeton University Press, 2009)

VIKTOR MAYER-SCHÖNBERGER

Proposal GDPR (25.01.2012)

Article 17

Right to be forgotten and to erasure

1. The data subject shall have the right to obtain from the controller the erasure of personal data relating to them and the abstention from further dissemination of such data, especially in relation to personal data which are made available by the data subject while he or she was a child, where one of the following grounds applies:
 - (a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
 - (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or when the storage period consented to has expired, and where there is no other legal ground for the processing of the data;
 - (c) the data subject objects to the processing of personal data pursuant to Article 19;
 - (d) the processing of the data does not comply with this Regulation for other reasons.

Once upon a time...



Google

Legal Questions

- What is the territorial scope of application of Data Protection Directive?
- What is material scope of application of Data Protection Directive?
 - Is an internet search engine provider processing personal data?
 - Is an internet search engine provider the ‘data controller’?
 - What are the obligations of an internet search engine provider?
- Does the Directive grant individuals (“data subjects”) a “*right to be forgotten*”?



CURIA - Documents

JUDGMENT OF THE COURT (Grand Chamber)

13 May 2014 (*)

In Case C-131/12,

REQUEST for a preliminary ruling under Article 2
(Spain), made by decision of 27 February 2012, recei
proceedings

Google Spain SL,

Google Inc.

v

Agencia Española de Protección de Datos (AEPD),

Mario Costeja González,

**RIISING LIKE A PHOENIX: THE 'RIGHT TO BE
FORGOTTEN' BEFORE THE ECJ**

**Opinion: Google privacy ruling could
change how we all use the Internet**

European Court Lets Users Erase Records on Web

Straightjacketing the librarian?

The ECJ is right, the result is wrong

Roll up for digital whack-a-mole



*CJEU TRAMPLES ON
GOOGLE'S BED
OF
'FORGET-ME-NOTS'*

Don't Force Google to 'Forget'

**MEMORABLE VICTORY FOR
PRIVACY OR DEFEAT FOR FREE
SPEECH?**

© Paul Bernal

**The CJEU's Google Spain judgment: failing to
balance privacy and freedom of expression**

Neither Triumph Nor Disaster?

A. Put decision in context



Myth-Busting

The Court of Justice of the EU and the “Right to be Forgotten”



Right to be Forgotten?

- Data Protection Directive (95/46)
 - Right to Rectification, Erasure or Blocking (art.12(b))
 - Right to Object (art.14(a))

⇒ *Right to be “de-listed” rather than “forgotten”*

(link will be removed in result list generated upon name-based search)

⇒ *Balancing exercise (e.g. §§ 81, 97, 99) !!*

B. Practical Implementation

- **Google's online form**
=> list name and email address, supply photo identification, explain how each linked page is related to them and why the search result is "irrelevant, outdated, or otherwise inappropriate."

Search removal request under data protection law in Europe

Background

A recent ruling by the Court of Justice of the European Union (C-131/12, 13 May 2014) found that certain people can ask search engines to remove specific results for queries that include their name, where the interests in those results appearing are outweighed by the person's privacy rights.

When you make such a request, we will balance the privacy rights of the individual with the public's interest to know and the right to distribute information. When evaluating your request, we will look at whether the results include outdated information about you, as well as whether there's a public interest in the information — for example, we may decline to remove certain information about financial scams, professional malpractice, criminal convictions, or public conduct of government officials.

You will need a digital copy of a form of identification to complete this form. If you are submitting this request on behalf of someone else, you will need to supply identification for them. Fields marked with an asterisk * must be completed for your request to be submitted.

Please select the country whose law applies to your request *

Select one ▾

Personal information

Name used to search *

This should be the name that, when used as a search query, produces a list of results from which you are requesting that a result, or results, be removed

Full name of requester

Your own name, if you are representing somebody else (If you're sending a request for someone else, you must have the legal authority to act on their behalf)

If you are submitting this request on behalf of someone else, please specify your relationship to that person (for example: "parent" or "attorney")

Contact email address *

(where emails about your request will be sent)

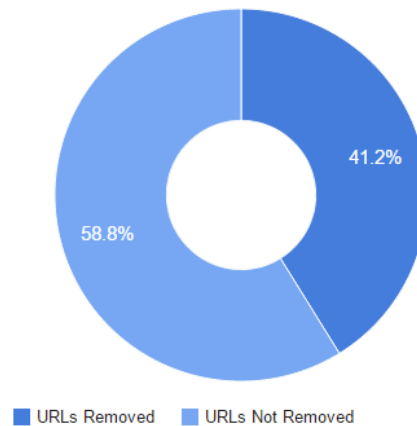
Search results you want removed from the list of results produced when searching for the name

B. Practical Implementation (2)

Statistics ("Google transparency report")

URL removal request totals

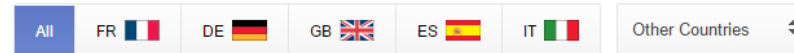
The graph below shows data on the percentages of URLs that we have reviewed and processed. The figures on the right are based on the total number of requests received. These data date back to the launch of our official request process on 29 May 2014.



Total URLs that Google has evaluated for removal: **847,644 URLs**

Total requests that Google has received: **233,808 requests**

The graph reflects URLs that have been fully processed, while the figures above reflect the total evaluated. URLs that require more information or are pending review are not included in the graph.



Sites that are most impacted

The list below highlights the domains where we've removed the most URLs from search results.

Of total URLs requested for removal from search results, these top ten sites account for **8%**

www.facebook.com URLs removed: 6052	profileengine.com URLs removed: 5599	groups.google.com URLs removed: 3900	www.youtube.com URLs removed: 3621	badoo.com URLs removed: 3468
plus.google.com URLs removed: 2474	www.yasni.de URLs removed: 2443	www.wherevent.com URLs removed: 2428	www.192.com URLs removed: 2334	twitter.com URLs removed: 2291

of requests that we encounter

of requests that we've received from individuals. In assessing each request, Google must consider the rights of as public interest in the content.

ted that we remove a decades-old article about her
er, which included her name. We have removed the
n results for her name.



B. Practical Implementation (3)

- Advisory Council to Google**



The Advisory Council to Google
on the Right to be Forgotten

Read the Advisory Council's final
report

How should one person's right to be forgotten be balanced with
the public's right to information?

Who is the council?



Prof. Luciano Floridi ▶



Sylvie Kauffmann ▶



Lidia Kolucka-Zuk ▶



Frank La Rue ▶



José-Luis Piñar ▶



Sabine Leutheusser-
Schnarrenberger ▶



Peggy Valcke ▶



Jimmy Wales ▶



Eric Schmidt ▶



David C. Drummond

B. Practical Implementation (4)

- **Art. 29 WP**

ARTICLE 29 DATA PROTECTION WORKING PARTY



14/EN
WP 225

**GUIDELINES ON THE IMPLEMENTATION OF THE COURT OF
JUSTICE OF THE EUROPEAN UNION JUDGMENT ON
“GOOGLE SPAIN AND INC V. AGENCIA ESPAÑOLA DE
PROTECCIÓN DE DATOS (AEPD) AND MARIO COSTEJA
GONZÁLEZ” C-131/12**

Adopted on 26 November 2014

C. Some questions for discussion

- (Weight of) Relevant criteria?
- Territorial scope?
 - *Only EU versions? Global? Case-by-case?*
 - *Domain-based? Geographic filtering?*
- Webmaster notice?
- Transparency towards public?
 - *Should Google mention (or not) if it removes search results after a request?*

C. Some questions for discussion

- Separate liability search providers – publishers: hierarchy?
 - *Should data subjects not be asked to go first to the source? (subsidiarity) Or is it better to lose a link than the underlying content?*
- Arbitration mechanism? (coherence)
- Role of DPAs? Courts?

16.00-18.00

Data Protection and the Right to Be Forgotten

Chair: **Peggy Valcke** | KU Leuven

Search engines after Google Spain: internet@liberty or privacy@peril?

Aleksandra Kuczerawy | KU Leuven

(co-authors: **Brendan van Alsenoy** and **Jef Ausloos**)

Discussant: **Giorgio Monti**

The Google Spain case: part of a harmful trend of jurisdictional overreach

Dan Svantesson | Centre for Commercial Law at Bond University

Discussant: **Peggy Valcke**

Challenges in regulating digital infrastructure at the content layer

Argyri Panezi | European University Institute

Discussant: **Peggy Valcke**